ORDINANCE NO. 90.13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND ADOPTING PUBLICLY OWNED TREATMENT WORKS (POTW) PRETREATMENT ENFORCEMENT RESPONSE GUIDELINES AND PENALTY POLICY IMPOSING FINES; AMENDING CHAPTER 27 TO THE TEMPE CITY CODE.

WHEREAS, the City of Tempe has the authority to define and abate nuisances and impose fines upon persons creating or continuing a nuisance pursuant to A.R.S. §9-276(A)(16),

WHEREAS, the City of Tempe owns and/or participates in Publicly Owned Treatment Works (POTW),

WHEREAS, the POTW is subject to the laws and regulations of the United States and the State of Arizona,

WHEREAS, the City of Tempe in compliance with the laws and regulations of the United States and State of Arizona; and in the interest of protecting the public health and the POTW system has adopted an industrial user pretreatment program,

WHEREAS, discharge limitations have been established and have been adopted by statute and regulation of the United States and State of Arizona and by ordinance of the City of Tempe,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That Chapter 27, Tempe City Code, be and same is hereby amended by adding thereto Sections 27-65 and 27-66 as follows:

Section 27-65. Discharge Violations.

That all discharges into the Publicly Owned Treatment Works (POTW) in violation of the laws and regulations of the United States, the State of Arizona and the ordinances of the City of Tempe, are hereby defined by the Tempe City Council to be a nuisance to the Publicly Owned Treatment Works (POTW) which shall be abated and fined pursuant to the laws and regulations of the United States and the State of Arizona as well as the ordinances of the City of Tempe.

Section 27-66. Enforcement; Penalties.

- (A) That the "Enforcement Response Guidelines for the City of Tempe" and "Penalty Policy" attached hereto as Exhibit 1 is hereby adopted and approved.
- (B) That enforcement action on the nuisance hereby defined by this ordinance is the responsibility of the Public Works Director.
- (C) The "Enforcement Guidelines" and "Penalty Policy" are enforcement actions which are additional and optional and in no way limit other remedies available to the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 12 th day of Opil, 1990.

MAYOR

ATTEST:

APPROVED AS TO FORM:

City Attorney

Section 27-66

PRETREATMENT PROGRAM ENFORCEMENT RESPONSE GUIDELINES FOR THE CITY OF TEMPE

The goal of the Pretreatment Program for the City of Tempe is to obtain compliance with the applicable laws and regulations by those regulated dischargers into the Publicly Owned Treatment Works or POTW. These enforcement response guidelines shall be interpreted in the interest of obtaining compliance of all applicable laws and regulations by dischargers into the POTW.

The Public Works Director of the City of Tempe pursuant to the authorities and responsibilities under Articles IV and V of Chapter 27, Tempe City Code, hereby proposes these administrative enforcement response guidelines including the imposition of fines and appropriate civil penalties.

These guidelines and penalties were developed with reference to the United States Environmental Protection Agency publication, "Guidance for Developing Control Authority Enforcement Response Plans" dated September 1989.

"Enforcement Response" shall include but is not limited to the following:

- A. Contact by inspector.
- B. Notice of violation.
- C. Increased monitoring and testing.
- D. Administrative orders: (a) modification of permits, (b) fines, (c) other appropriate orders.
- E. Order to show cause--formal meeting requiring the discharger to appear and answer either specific allegations or indicate why further enforcement should not occur.
- F. Publication of significant violators and imposition of fines.
- G. Civil action including injunctive relief.

Exhibit 1

- H. Termination of service.
- I. Criminal investigation and action.

The enforcement policy and procedures currently followed by City of Tempe is consistent with the United States Environmental Protection Agency publication, "Pretreatment Compliance Monitoring and Enforcement Guidance," published September of 1986. Current enforcement policy reserves the enforcement option to consider previous compliance history, length of violation, quantity of violations, seriousness to facilities and public health of the violation, the history of the violation, and any other relevant factors as part of determining what enforcement action is to be taken including the above-stated goal to obtain compliance. This same policy is restated and carried forward with the issuance of these guidelines.

The United States Environmental Protection Agency has issued a new publication (September 1989) entitled, "Guidance for Developing Control Authority Enforcement Response Plans." The attached Exhibit A "Enforcement Response Guidelines" are derived from the above-referenced EPA materials and are adopted and approved for the City of Tempe.

The attached Exhibit B "Penalty Policy" is derived from a similar policy adopted by the City of Phoenix and it is consistent with the above-referenced EPA publications. The attached Exhibit B is adopted and approved for use by the City of Tempe.

ENFORCEMENT RESPONSE GUIDELINES

(A) Description of Terms

Terms and abbreviations used in the enforcement guide are defined below. Specific enforcement responses that appear on this guide are described in more detail in Chapter 5, to the United States Environmental Protection Agency publication of September 1989 entitled, "Guidance for Developing Control Authority Enforcement Response Plans."

AO

- Administrative Order.

Civil Litigation

- Civil litigation against the industrial user seeking equitable relief, monetary penalties and actual damages.

Criminal Prosecution

- Pursuing punitive measures against an individual and/or organization through a court of law.

Fine

- Monetary penalty assessed by Control Authority officials. Fines should be assessed by the pretreatment coordinator or the POTW Superintendent.

 Π

- Industrial User.

Meeting

- Informal compliance meeting with the IU to resolve recurring noncompliance.

NOV

- Notice of Violation.

SV

- Significant Violation.

Show Cause

- Formal meeting requiring the IU to appear and demonstrate why the Control Authority should not take a proposed enforcement action against it. The meeting may also serve as a forum to discuss corrective actions and compliance schedules.

UNAUTHO	UNAUTHORIZED DISCHARGES (No permit)		
Nonco	Noncompliance	Nature of the Violation	Enforcement Responses
1. Unper	Unpermitted discharge	IU unaware of requirement; no harm to POTW/environment	Phone call; NOV with application form
		IU unaware of requirement; harm to POTW	- AO with fine - Civil action
		Failure to apply continues after notice by the POTW	 Civil action Criminal investigation Terminate service
2. Nonpe (failur	Nonpermitted discharge (failure to renew)	IU has not submitted application within 10 days of due date	Phone call; NOV
DISCHARC	DISCHARGE LIMIT VIOLATION		
1. Exceed	Exceedance of local or	Isolated, not significant	Phone call; NOV
Federa (perm	Federal Standard (permit limit)	Isolated, significant (no harm)	AO to develop spill prevention plan and possible fine
		Isolated, harm to POTW or environment	- Show cause order - Civil action
		Recurring, no harm to POTW/environment	AO with fine
		Recurring, significant (harm)	- AO with fine - Show cause order - Civil action - Terminate service
		Recurring, with knowledge/intent	- Criminal investigation

MONITORING AND REPORTING VIOLATIONS

	Noncompliance	Nature of the Violation	Enforcement Responses
	Reporting violation	Report is improperly signed or certified	Phone call or NOV
		Report is improperly signed or certified after notice by POTW	- AO - Show cause order
		Isolated, not significant (c.g., 5 days late)	Phone call; NOV
		Significant (e.g., report 30 days or more late)	AO to submit with fine per additional day
		Reports are always late or no reports at all	- AO with fine - Show cause order - Civil action
		Failure to report spill or changed discharge (no harm)	NOV
		Failure to report spill or changed discharge (results in harm)	- AO with fine - Civil action
		Repeated failure to report spills	- Show cause order - Terminate service
		Falsification	- Criminal investigation - Terminate service

MONITORING AND REPORTING VIOLATIONS (Continued)

	Noncompliance	Nature of the Violation	Enforcement Responses
5	Failure to monitor correctly	Failure to monitor all pollutants as required by permit	NOV or AO
		Recurring failure to monitor	- AO with fine - Civil action
3.	Improper sampling	Evidence of intent	- Criminal investigation - Terminate service
4.	Failure to install	Delay of less than 30 days	NOV
	monitoring equipment	Dclay of 30 days or more	AO to install with fine for each additional day
		Recurring, violation of AO	- Civil action - Criminal investigation - Terminate service
5.	Compliance Schedules (in permit)	Missed milestone by less than 30 days, or will not affect final milestone	NOV or AO with fine
		Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	AO with fine
		Missed milestone by more than 30 days, or will affect final milestone (no good cause for delay)	Show cause orderCivil actionTerminate service
		Recurring violation or violation of schedule in AO	 Civil action Criminal investigation Terminate service

Noncomplian Wastestreams in lieu of trea failure to mi noncompliano production Failure to pro operate and 1 pretreatment Entry Denial Illegal Discha	Nature of the Violation 1. Wastestreams are diluted in lieu of treatment Recurring 2. Failure to mitigate noncompliance or halt production 3. Failure to properly operate and maintain pretreatment facility VIOLATIONS DETECTED DURING SITE VISITS 1. Entry Denial Copies causes harm or evidence of intent/negligence	AO with fine - Show cause order - Terminate service NOV - AO with fine - Civil action to IU AO with fine - Civil action AO with fine - Civil action - Civil action - Civil action - Civil action - Civil action - Civil action - Civil action - Civil action
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VIOLATIONS DETECTED DURING SITE VISITS (Continued)

PENALTY POLICY

(A) General Provisions

- (1) The penalty associated with violations should reflect the seriousness, frequency and persistence of the violation. A mathematical method has been developed to compute a penalty amount for pollutant violations and reporting violations. Any costs associated with the violation(s) (such as sampling, analysis, investigation) and any damage to the environment or the City's system is an additional charge which will be billed to the violator (Tempe City Code, Section 27-77(d)).
- (2) The concept of a penalty is that the violator should not be allowed to enjoy any economic benefit from having been in violation and should be caused to suffer economically. Once a penalty is computed, the amount may be increased or lowered due to consideration for recalcitrance, litigation costs and ability to pay.
- (3) The Public Works Director may impose the penalties provided herein by Administrative Order which provides that the violator may request a hearing before the Public Works Director or hearing officer if a written request is made within ten (10) days of the Administrative Order. The written request must specify the issues and/or grounds upon which a review hearing is requested.

(B) Violations of Permit Conditions

The penalty for violation of permit conditions will be a maximum fine per violation per day of \$2,500. For failure to perform an analysis required by permit, the amount should generally be double the costs saved. The following penalty amounts should be considered minimum, and represents the normal penalty for failure to do the analysis required:

1)	Metals analysis	\$200
2)	Cyanide, Cr ⁺⁶	\$100
3)	TTO	\$500

(C) Discharge Limit and Reporting Violations

The base penalty for late or missing reports and violations of discharge limitations are computed from the formula $Penalty = 100 \times 1 + Factor A + Factor B + Factor C + Factor D$). For each violation, a separate calculation is performed per day. The formula represents a base amount which shall be multiplied by a sum of factors as determined from the Magnitude of Components set forth in subparagraphs one (1) through four (4) below.

Magnitude of Components

1. Factor A - Significance of Violation

# of Days a Report is Late	% Exceedance of Daily or Slug Limit	% Exceedance of Average Limit	<u>Factor</u>
6 - 15 16 - 30 31 - 60 61 - 90 91 - 120 121 - 150 151 - 180 181 - 210 211 - 240 241 - 270 > 270	N/A 1 - 50 51 - 100 101 - 200 201 - 600 601 - 1000 1001 - 2000 2001 - 3000 3001 - 4000 4001 - 5000 > 5000	N/A 1 - 20 21 - 40 41 - 100 101 - 300 301 - 500 501 - 1000 1001 - 1500 1501 - 2000 2001 - 2500 > 2500	0 1 2 3 4 5 6 7 8 9
pH Violations:	4.0 - 4.49 and 10.0 - 10 3.0 - 3.99 and 11.0 - 11 < 3.0 or > 11		

2. Factor B - Health and Environmental Harm or Potential Harm

Discharg	e Volume (gpd)	Health Effects*	Aquatic or Sludge
10,001 25,001 50,001 100,001	to 10,000 - 25,000 - 50,000 - 100,000 - 250,000 > 250,000	0.2 0.4 0.8 1.2 2.0 4 - 10	0.1 0.2 0.4 0.6 1.0 2 - 10

^{*} Applies to pH, Cr⁺⁶, Cyanide, Sulfides, Residual Chlorine, VOCs, or any other material posing a threat to workers in the system or the public.

3. Factor C - Number of Violations

This factor accounts for the number of violations occurring in a given month, or frequency of the violations. For violations of both an average limit and daily limit(s), the same factor should be applied to both computations.

Determine the percentage of the number of measurements which were violations and multiply this percentage by 2.5. Repeat this calculation for the average limit and then add the two results to arrive at a factor.

Example:

Four (4) violations of the daily copper limit and one (1) violation of the monthly copper limit occur in March. There were eight (8) daily measurements made and one (1) computation (measurement) of the monthly average.

NOTE:

This frequency computation is performed separately for self-monitoring and City monitoring. Do NOT combine either the number of violations or the number of measurements.

4 daily violations / 8 measurements = 50% 1 average violation / 1 measurement = 100%

> 2.5×0.50 = 1.25 2.5 x 1.00 = 2.50

The factor then is = 3.75

4. Factor D - Duration of Non-Compliance

Factor = 0 - 5

Number of months in a six month period in excess of one month in which the parameter was violated.